



THE CITY OF SAN DIEGO

Report to the Planning Commission

DATE ISSUED: October 1, 2020

REPORT NO. PC-20-064

HEARING DATE: October 8, 2020

SUBJECT: **AN AMENDMENT TO THE CITY'S MUNICIPAL CODE AND LOCAL COASTAL PROGRAM TO IMPOSE A LICENSE REQUIREMENT AND OPERATING REGULATIONS FOR SHORT TERM RESIDENTIAL OCCUPANCY INCLUDING HOSTING PLATFORMS AND REPEAL REGULATION FOR BED AND BREAKFAST AND BOARDER LODGING. Process Five Decision**

SUMMARY

Issue(s): Shall the Planning Commission recommend City Council approval of an ordinance that regulates Short Term Residential Occupancy (STRO). The ordinance amends the Municipal Code to include short term residential occupancy licensing and operating regulations on hosts and hosting platforms; and repeal the bed and breakfast, and boarder and lodger uses and regulations.

Staff Recommendation(s): Recommend City Council approval of the proposed ordinance.

Stakeholder and Community outreach: From January 2019 through today, Council District 2 staff convened various meetings with stakeholders and community groups on this issue including: San Diego County Lodging Association, Ocean Beach Planning Board, Ocean Beach Town Council, Mission Beach Planning Board, Mission Beach Town Council, San Diego Community STVR Working Group, Unite Here, and community leaders from: Pacific Beach, Point Loma, Clairemont, Mission Beach, Ocean Beach, Expedia, Airbnb, Share San Diego and the California Coastal Commission.

City Strategic Plan Goal(s)/Objective(s):

The proposed regulations support the following City of San Diego Strategic Plan goals and objectives by balancing the economic opportunity created by STRO, protecting the rights of property owners and renters, and ensuring the safety of hosts, guests and neighbors of these units.

Goal 1: Provide high quality public service: Ensure equipment and technology are in place so that employees can achieve high quality public service.

Goal 2: Work in partnership with all our communities to achieve safe and livable neighborhoods; Reduce and prevent crime.

Goal 3: Create and sustain a resilient and economically prosperous City with opportunity in every community; Diversify and grow the local economy.

Environmental Review: Implementation of this project's actions would not result in new significant direct, indirect, or cumulative impacts over and above those disclosed in the previously certified Environmental Impact Report (EIR) for the Land Development Code EIR No. 96-0333/SCH No. 96081056; the 2008 General Plan EIR No. 104495/SCH No. 2006091032, certified by the City Council on March 10, 2008, Resolution No. R-303473; and 2020 Addendum to the 2008 General Plan EIR No. 104495/SCH No. 2006091032 for the General Plan Housing Element Update, certified by the City Council on June 18, 2020, Resolution No. R-313099. Amendments are also covered under the following documents, all referred to as the "CAP FEIR": FEIR for the City of San Diego Climate Action Plan (CAP), certified by the City Council on December 15, 2015 (City Council Resolution R-310176), and the Addendum to the CAP, certified by the City Council on July 12, 2016 (City Council Resolution R-310595). Additionally, the project's actions would not result in any changes to the environment as they would result in increased regulations related to short term vacation rentals that would limit the physical impacts to neighborhoods resulting in such use. Therefore, the action is also not a project pursuant to CEQA Guidelines section 15378 and 15060.

Fiscal Impact Statement: Costs associated with implementation and enforcement of the ordinance will be covered by the license fees that will be brought forward for Council approval later. Council District 2 is working with the IBA to analyze the impact of the proposed regulations on the TOT revenue.

Housing Impact Statement: The proposed amendments include regulatory controls to help preserve residential housing by setting a cap of .75% on whole home rentals Citywide to minimize impacts to housing. Allowing home sharing is an example that can accommodate long term housing needs while accommodating short term accommodations for visitors.

BACKGROUND

In July 2020, Expedia Group, parent company to Short Term Rental Occupancy (STRO) brands and HomeAway, along with Unite Here Local 30, representing thousands of local hospitality workers, outlined a set of comprehensive STRO regulations in the form of a Memorandum of Understanding (MOU) <https://www.sandiego.gov/sites/default/files/memorandum-of-understanding-on-stv-rentals.pdf>. The MOU represents a compromise between two groups, which have historically approached STRO from opposite ends of the spectrum. The ordinance is consistent with the compromise proposed by Expedia Group and Unite Here Local 30. The ordinance proposes to establish regulations within Chapter 5 of the San Diego Municipal Code (SDMC) to clarify and define Short Term Rental Occupancy (STRO) as the occupancy of a dwelling unit or part thereof for less than one month. The regulations

would require a license to operate a STRO unit, establish limits on the number of licenses a host may obtain, create reasonable caps on the total number of whole home STRO units, and create a licensing process in order to track, manage and enforce all aspects of STRO.

The regulations being proposed today will allow the City to differentiate between part-time STRO use, home sharing, and whole home. This approach is intended to increase compliance of the law while ensuring better oversight of the industry.

By requiring STRO licenses and adopting regulations, the proposed ordinance creates a process by which residents can provide a service to the visitors of San Diego while at the same time protecting the integrity of existing neighborhoods. The regulations also establish a mechanism to cite, suspend or revoke the license of hosts not following the City's regulations.

Regulations for the hosting platforms (Vrbo, Airbnb and those that provide payment/reservation services for a fee) are also proposed. These regulations would require platforms engage in best practices to ensure a host using the STRO platform is properly licensed by, and registered with, the City of San Diego.

While San Diego specific data has not been made publicly available by the platforms in the short-term residential marketplace, in July 2019, an investigation by the Interim City Auditor determined that there are up to 16,000 dwelling units being used for STRO. This is the best estimate available of STRO units currently operating in the City today.

In addition to protecting the integrity of neighborhoods, the proposed STRO regulations are intended to help preserve the availability of housing by reducing the number of dwelling units currently used citywide for STRO by more than 70 percent, limiting the maximum number of licenses that any natural person can be issued to one and placing caps on the number of whole home STRO licenses the City will issue. These actions will help protect the livability of residential neighborhoods by requiring Good Neighbor policies; and will allow the diversification in economic opportunity that STRO enables, both for hosts and for guests. These actions will further help preserve low cost accommodations typically associated with the Mission Beach area. The intent of the regulation for the STRO platforms is to ensure that hosts are properly licensed and registered with the City.

From a land use perspective, the City of San Diego has traditionally considered occupancy of a dwelling unit to be a residential use, regardless of the length of the occupancy. While STRO of single and multifamily dwelling units continues to be a residential use and not a commercial one, the proposed STRO regulations do recognize that shorter term occupancies can have negative impacts on the neighborhood and the proposed regulations are intended to address those impacts.

DISCUSSION

San Diego has long been a desired tourist location, and this is demonstrated by the

significance of tourism to the regional economy. The sharing economy has challenged the status quo of residential occupancy and brought forth significant change in how occupancy occurs. For many years now, San Diego has seen a steady growth of residential occupancy over short periods, versus the historical longer-term occupancy of a dwelling unit, traditionally one month or longer. Often facilitated by peer-to-peer websites such as VRBO.com and Airbnb.com, such a change in the length and duration of residential occupancy has become even more significant as technology has enabled the ease of sharing dwelling units as lower-cost visitor accommodations for STRO.

After high tech and military, San Diego's third largest economic driver is the convention and tourism industry. As one of the top ten destinations for leisure or business, San Diego has 35 million visitors per year. Many visitors desire to try out the San Diego "experience," living like a local within a neighborhood by staying in homes like a local resident. In addition, during events such as Comic Con when hotels are nearly 100% occupied, STROs are popular as low-cost visitor accommodations. It is evident that a STRO is a popular model for both hosts and guests.

Benefits and Challenges:

The benefit or burden of STRO to communities and residents is somewhat difficult to quantify. Advocates for STROs cite economic benefits to local business owners, with many rental hosts using the hosting platforms to access the booking service in order to supplement personal income. While STROs provide hosts with a direct financial benefit and a benefit to the City and community to some degree by generating significant Transient Occupancy Tax (TOT) revenue, concerns about impacts from the hotel industry and negative impacts to the character of residential neighborhoods have been raised.

Cities play an important role in shaping the livability of neighborhoods, and STROs have the potential to both positively and negatively affect neighborhoods. On the positive side, visitors bring income to a neighborhood, both through payments to STRO hosts and by potentially patronizing neighborhood businesses. Conversely, short-term rental guests do not always exhibit good neighborly conduct when whole home STRO is occurring. As short-term rentals occur now more frequently, complaints (regarding noise, trash and other public nuisance violations) to the City from neighbors have risen, and requests for additional police and code enforcement are in demand in order to remedy the nuisances that some have attributed to STRO, particularly whole home rentals.

San Diego is facing a housing shortage, as well as a lack of affordable housing. Over the past decade, population growth has averaged 1.2 percent per year, more than double the rate of housing growth at 0.5 percent per year. There are approximately 540,000 dwelling units in the City of San Diego. Within the City of San Diego, of the total housing inventory, 64% is owner-occupied and 36% renter-occupied (American Community Survey, 2010). The City of San Diego's future housing need is estimated to be 150,000-220,000 units by 2028.

The proposed regulations are a detailed attempt to strike a balance recognizing both the benefits and challenges created by STRO for all San Diegans. The STRO ordinance presented

to the today is consistent with the framework originally introduced by Expedia and Unite Here Local 30. As such, it is a compromise which reflects the benefits and challenges of STRO.

Regulations:

Overview

A STRO host shall be defined as a natural person who has the legal right to occupy the dwelling unit and to allow STRO of the dwelling unit. A host may obtain one license at a time. In one of the following STRO license tiers:

- Tier One – Part-Time STRO rented for an aggregate of 20-days or less per year. The owner or permanent resident does not need to reside onsite during the STRO.
- Tier Two – Home sharing. Renting a room or rooms in the home so long as the owner or permanent resident resides onsite during the STRO, but the owner or permanent resident may be absent from the permanent residence during the STRO for up to 90 days per calendar year. Home sharing includes duplex properties and eligible accessory dwelling units and granny flats when the host resides onsite.
- Tier Three – Whole home rentals for more than 20-days per year where the owner or permanent resident does not reside onsite. The amount of whole home STRO licenses will not exceed 0.75 percent of San Diego's total housing units outside the Mission Beach Community Planning Area according to SANDAG's annual Demographic and Socioeconomic Housing estimates. This amount is equivalent to 4,050 licenses today, based on 0.75% of SANDAG's reported 540,022 dwelling units citywide, reduced by 3603 dwelling units in the Mission Beach Community Planning Area. Licenses issued in Tiers One, Two and Four are not counted in the 0.75 percent cap. Tier Three license holders must require a two-night minimum stay for guests.
- Tier Four – Mission Beach Whole Home STRO. Consistent with recommendations from the Mission Beach Town Council, the amount of whole home licenses in the Mission Beach Community Planning Area will be up to 30 percent of the community's total housing units for according to SANDAG's annual Demographic and Socioeconomic Housing estimates. SANDAG's 2019 estimate of housing units in the Mission Beach Community Planning area is 3603. The number of Tier Four licenses would be 1,081 today. Tier Four license holders must require a two-night minimum stay for guests.

All hosts are required to collect and remit all applicable taxes and fees to the City Treasurer, unless collected and remitted on the host's behalf by a hosting platform. Hosts must also comply with Good Neighbor policies such as posting local contact information on the property for neighbors to connect with the host or other responsible party. The regulations require hosts or another responsible party to respond to disturbances within one hour.

STRO License Applicants

The regulations do not distinguish between owner or renter, as a host of a STRO may be any natural person who is the property owner or anyone with permission from the property owner to occupy or manage the dwelling or the room being rented. The host may obtain a maximum of one STRO license at a time. Applicants will be required to provide a valid Transient Occupancy Registration Certificate and Rental Unit Business Tax Certificate. The administrative regulations will detail the specific requirements for license applications. Tier Three and Tier Four Licenses will be issued by lottery when there is sufficient demand.

Two-Night Minimum Stay

The STRO proposal mandates that any whole home STRO in license Tiers Three and Four require a two-night minimum stay. The two-night minimum stay does not apply to part time STRO (Tier One) or home share (Tier Two) in any location. The two-night minimum is proposed in response to disturbances by guest frequency in whole home STRO. The noise of people moving in and out is lessened and allows additional time for guests to become familiar with parking and trash regulations. By requiring two-night rentals, the intent is to reduce problems and disturbances associated with single night occupants' daily turnover in the most impacted areas. By requiring a two-night minimum stay for whole home rentals, single night visitors are more likely to stay at local hotels or other visitor accommodations, thereby reducing the problems associated with daily turnover. This is important as the proposal seeks to strike a balance with the demands for low cost visitor accommodations in the coastal and the metropolitan areas, where demands for visitor accommodations are high. The Coastal Commission has certified Local Coastal Program amendments with minimum stay requirements in other jurisdictions.

Good Neighbor Policy

In order to facilitate neighborhood quality of life, hosts will be required to provide guests with a Good Neighbor policy designed to make the guest familiar with trash, parking and other rules of conduct that promote neighborhood cohesion and livability. The Good Neighbor policy shall inform guests they are expected to abide by all laws, be respectful, and maintain the residential character of the neighborhood. It also includes information regarding the maximum number of occupants and the City noise limits. The Good Neighbor policy must remind guests that violation of the noise ordinance can result in individual administrative citations to both the guest and the host, of up to \$1,000. The Good Neighbor policy will inform guests that if the police are called to address disturbances, health, safety, or general welfare issues, the STRO guests may be responsible for repayment to the City for the cost of the police response.

Local Contact

A critical component for enforcement of the regulations is the requirement of local contact available to respond to neighborhood disturbances within one hour. All hosts must post a notice in a visible location (from the sidewalk or public right of way) containing contact information for a designated local contact who shall be responsible for actively discouraging

and preventing any nuisance activity at the premises, pursuant to Municipal Code Chapter 5. The host or designated local contact shall respond to the complainant in person or by telephone within one hour for all reported complaints and shall take action to resolve the issue. The 8.5" x 11" notice must include the Transient Occupancy Registration Certificate number (currently required by SDMC Chapter 3, Article 5 to be posted in a conspicuous location), and the contact information and telephone number for the host or the designated local contact and the City of San Diego Code Enforcement Division. The host shall maintain the notice in good condition while the dwelling unit is operated for STRO.

Public Safety Awareness

To address concerns about human trafficking occurring in dwelling units operated for STRO,, STRO hosts shall be required to take human trafficking prevention training and educate all workers who may interact with guests so that they can identify and report human trafficking. STRO hosts must post, conspicuously in the home, guidance for reporting human trafficking and complete an online human trafficking awareness program before a listing can be activated. Any host found to be in violation of human trafficking laws shall have their STRO license permanently revoked.

Mission Beach

With its unique peninsular geography, high density units sandwiched by the Pacific Ocean to the west and serene Mission Bay to the east, Mission Beach (Attachment 1) has long been a haven for STRO. Mission Beach is also the home of Belmont Park, an iconic and historic amusement park with a 1920's restored wooden roller coaster, a historic pool, many carnival rides, games and food and beverage establishments, is a prominent tourist destination in San Diego. While there are several permanent residents who make Mission Beach their home, a large percentage of the dwelling units in the area have been a combination of monthly and weekly STRO for decades. It is important to note there are no hotels or motels in south Mission Beach, and therefore, the only visitor accommodations in south Mission Beach are STROs. There are two hostels and only two hotels in Mission Beach proper; they are all located in north Mission Beach. Excluding STRO of private dwelling units, there are mostly resort accommodations in the Mission Bay area near Mission Beach including but not limited to the Bahia, Hyatt Regency, Paradise Point, and the Dana Inn.

A widely known rental model in Mission Beach is a combination of short term and long-term rental; nine months or longer during the fall, winter and spring, and weekly during the summer. Due to the limited visitor accommodations in one of San Diego's most unique and coveted beach areas, the STRO regulations include the recommendations proposed by the Mission Beach Town Council allowing for up to 30 percent of the total housing units in the community to be used for whole home STRO. Today this amount would equate to 1,081 whole home STRO units. Whole home STRO units in Mission Beach shall not be counted in the citywide whole home cap.

In 2018, the City analyzed available data regarding private property ownership, within Mission Beach. It was found of the 1,992 total residential property owners - roughly 1/3 - own two or more units. Three hundred and nine property owners have three or more units

in the Mission Beach neighborhood. The intent of regulations is for STROs to continue to occur in this area where the demand is high for vacation rentals and has been so historically for decades. Hosts in Mission Beach are not exempted from the remainder of the proposed requirements, such as the Good Neighbor policy.

A restriction on STRO units in Mission Beach could have an adverse impact on public access and visitor-serving opportunities in this area. STRO units have historically provided and continue to be an important source of visitor accommodations by increasing the available supply of overnight accommodations. STRO units provide amenities that distinguish them from other types of overnight lodging such as hotels and may make them a more affordable option for overnight stays on the coast, particularly for groups and families. STRO units also provide a visitor experience that is unique and different from a standard hotel/motel, and the dwelling units are situated in close proximity to both the ocean and the bay, an experience that is very exclusive if greatly restricted from the current conditions where the rentals are widely available. With the large number of owners with multiple properties in Mission Beach proper, the intent is to allow some of the existing conditions to continue coastal short-term residential occupancy. SANDAG estimates 3603 total housing units in the Mission Beach Community Planning Area, which would provide for 1,081 Tier 4 licenses today.

STRO Platform Compliance

In order to appropriately regulate the conduct of STRO platforms and to ensure that hosts comply with the licensing and tax registration requirements under the Municipal Code, new STRO platform compliance regulations are proposed. Given the role STRO platforms play in facilitating STRO transactions through the provision of payment and/or reservation services for a fee, it is critical that STRO platforms assist with ensuring hosts are properly licensed and abiding by the City's STRO regulation and TOT code.

STRO platforms shall:

1. Require hosts to include a STRO license number in any listing posted on the STRO platform;
2. Verify the STRO license number against the City's registry and deactivate any STRO listing that lacks a verified license number;
3. Collect and remit all applicable taxes and fees monthly to the City on the host's behalf.

Similar to how STRO is being managed in other jurisdictions, the City will create a registry of licensed STRO units that is accessible to the STRO platforms and at a minimum include the city issued STRO license number. The City will update the registry at least daily to include newly issued STRO license numbers for the STRO platforms to cross reference. The proposed regulations also allow the City to contract with platforms for other methods of compliance.

Enforcement Overview

The STRO regulations provide the City the mechanism to cite, suspend, or revoke the license of hosts not following the City's STRO regulations.

The City is committed to active STRO Code Enforcement to ensure host, guest, and platform compliance with the regulations. Code Enforcement officers will work evenings and weekends to address STRO code complaints, the City will create a channel for neighbors to file complaints about STRO where noise or other violations are believed to be occurring, such as a whole home operation without a license. Complaint systems will be established for neighbors and stakeholders to bring to the City's attention hosts that are in violation of the STRO ordinance or otherwise creating a nuisance or health and safety risk. This may be via an online complaint form, a hotline, or a mobile app such as Get It Done.

There may be instances where a neighbor is disgruntled regarding STRO activity that is occurring lawfully. In these cases, neighbors will be referred to low cost conflict resolution services for civil disputes. Code Enforcement, together with the Police Department when necessary, and in conjunction with license and TOT information provided by the City Treasurer, will be responsible for determining if a violation has occurred. Additionally, the City may elect to enlist services from a third-party provider, who can assist the City from a data perspective, regarding listings on platforms that are not in conformance with the regulations. Such a service may be able to assist the City in assembling web-based evidence that STRO violations are occurring.

The enforcement strategy is based on an inter-departmental team-based approach to include Code Enforcement staff, City Treasurer, City Attorney, and San Diego Police Department (SDPD) officers.

Program Overview

- A license or registration will be filed with the Office of Short Term Residential Occupancy prior to STRO use. STRO licenses must be renewed bi-annually. Hosts will be required to obtain a Transient Occupancy Registration Certificate. The TOT certificate number shall be posted on all advertisements for the STRO.
- Office of Short Term Residential Occupancy will maintain a Registry of all STRO licenses and will provide the information to the SDPD.
- Complaint calls will be received 24 hours per day, seven days per week. An online portal to report violations will also be created.

In addition to the Municipal Code's general enforcement mechanisms, STRO enforcement specifically can include the following responses, as appropriate:

- A notice constitutes a 'warning'.
- An administrative citation.
- A third response notice (citation) within a 12-month period may result in the STRO license revocation for a 12-month period for the host.

- Office of Short Term Residential Occupancy will be responsible for enforcement including notice of violations, administrative citations, and revocation of licenses. If a violation is found during the tax compliance audit process, a referral will be made to Office of Short Term Residential Occupancy for enforcement.
- Office of Short Term Residential Occupancy will continue to monitor websites to ensure that STROs operators are paying TOT. Violators will be reported to City Attorney for action.

Program Resource & Cost Needs for Approximately 6,000 licenses (based on 2020 TOT Short Term rental existing certificates).

- Create new Office of Short Term Residential Occupancy for program management and enforcement
- Hire Code Enforcement officers
- Establish digital license and registration system that interfaces with City databases, and allows pass through registration with platforms.
- Program Enforcement will be General Funded, offset by corresponding STRO generated revenue.
- Hire the following: 1 Program Manager, 1 Fiscal Analyst, Plan Review Specialists, and 4 Code Enforcement Officers

License Fees

Annual license fees shall be assessed at varying rates based on estimated services requirements and costs to the City. Historically, part time (Tier One) and home sharing (Tier Two) STRO units have not required as much enforcement as whole home STRO units (Tiers Three and Four). The City Council will be asked to consider licensing and renewal fees closer to the implementation of the STRO regulations.

Effective Dates

Full compliance with every section in the ordinance will be required by hosts and STRO platforms by January 1, 2022. Once the ordinance is approved by Council, City staff will create administrative regulations that will detail how licenses will be issued and administered.

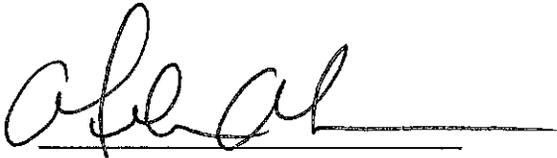
Conclusion:

Given the value that STROs provide the City, its citizens and visitors, and the value the Coastal Commission places on short-term residential occupancy as a way to provide lower cost visitor accommodations in the coastal areas (pursuant to the Coastal Act policy to protect, encourage, and provide lower cost visitor facilities), a set of balanced and clear regulations and corresponding enforcement program are needed to address adverse impacts and eliminate confusion and frustrations felt by all those affected.

The intent of the STRO regulations are to help preserve the availability of long-term rental housing, protect the livability of residential neighborhoods, and allow the diversification in economic opportunity that STRO enables, both for hosts, and for guests. Regulation of the hosting platforms is necessary in order to ensure that hosts are properly licensed or registered by the City of San Diego.

Given the role STRO platforms play in facilitating STRO activity, it is also the intent of the STRO regulations to require hosting platforms to help ensure that hosts conduct STRO activity in a lawful manner. To that extent, STRO platforms will be required to notify hosts of the local TOT and STRO code requirements, and exercise best practices to verify that hosts are properly registered and licensed with the City. If a STRO platform collects rent, the STRO platform must also collect TOT at the same time as the rent is collected and remit it to the City.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Venus Molina', written over a horizontal line.

Venus Molina
Chief of Staff
Council District 2

Attachments:

1. Draft code language (strikeout/underline)
2. Map of Mission Beach

